

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRIS EDWARD ADAMS,

Defendant-Appellant.

UNPUBLISHED

September 26, 2006

No. 261512

Oakland Circuit Court

LC No. 04-198648-FH

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for first-degree retail fraud, MCL 750.356c(1)(b). Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 1½ to 15 years in prison. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted of the theft of a diamond watch from the Watches Plus kiosk at Great Lakes Crossing Mall in Auburn Hills. In a statement to police made shortly after the theft, the clerk working at the stand positively identified defendant as the thief. The next morning, the clerk notified the police that he was no longer certain about his positive identification. At trial, the clerk expressed further doubt about his positive identification and gave testimony that was inconsistent with his statements on the night of the theft. On appeal, defendant argues that there was insufficient evidence to identify defendant as the thief and contends that his motion for a directed verdict on this ground should have been granted. We disagree.

When reviewing a claim of insufficient evidence, we review the record de novo. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We review the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). We use the same standard when reviewing a trial court's denial of a motion for a directed verdict. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006).

Defendant does not dispute that the elements of first-degree retail fraud were established at trial. Rather, defendant contends that the prosecution failed to establish his identity as the thief because the clerk who positively identified defendant gave inconsistent testimony and expressed doubt about his identification. We disagree.

The clerk's testimony was not the only source of evidence identifying defendant as the thief. The officer who responded to the clerk's report of the theft testified that the clerk positively identified defendant as the thief and that, in doing so, the clerk indicated that he was 100 percent certain of the identification. Beyond the positive identification evidence, there was also evidence that linked defendant to the car to which the clerk suspected the thief ran after the theft. Defendant returned to the car on the night of the theft and told his girlfriend that he planned to retrieve the car from the mall parking lot. Other circumstantial evidence also bolstered the inference that defendant was guilty of the theft. After arriving at the car in a van and discovering that police were in the parking lot, he hid in the back of the van until police pulled him out. Furthermore, in his first statement, the clerk described the thief as having a tattoo on his arm; at trial, the officer confirmed that defendant had a tattoo on his arm. Viewed in a light most favorable to the prosecution, the evidence was sufficient to identify defendant as the thief.

Defendant's primary argument appears to challenge the validity of and weight to be given the clerk's positive identification, given his later misgivings. However, any inconsistencies or misgivings presented by the clerk regarding his observation of the thief, his identification of the car, or his description and subsequent positive identification were a matter for the jury in its determination of the facts. See *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, mod 441 Mich 1201 (1992) (this Court will not interfere with the trier of fact's determination of the weight of the evidence or the credibility of the witnesses). The inconsistencies and misgivings are not grounds for reversal given that the evidence, including the clerk's previous positive identification, were sufficient to identify defendant as the thief. Therefore, the evidence was sufficient to support the conviction and the trial court appropriately denied defendant's motion for a directed verdict.

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder